

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

WARREN KEY,	)	
	)	
Plaintiff,	)	
	)	C.A. No.: K22C-01-004 RLG
v.	)	
	)	
LOUIS COSTA, D.O., and	)	
SURGICAL ASSOCIATES, P.A.,	)	
	)	
Defendants.	)	

Submitted: January 26, 2023  
Decided: February 27, 2023

**ORDER**

*Upon Review of the Affidavit of Merit – COMPLIANT*

This matter involves a medical negligence suit filed by Plaintiff, Warren Key, against Defendants Louis Costa, D.O. (“Costa”), and Surgical Associates, P.A. (“SAP”). Plaintiff alleges that Costa’s and SAP’s negligent medical care caused Plaintiff’s pain, suffering, and need for a corrective surgery. Specifically, Plaintiff alleges that Costa, and vicariously SAP, failed to detect, treat, and correct the ilioinguinal nerve entrapment syndrome that allegedly resulted from a left inguinal hernia repair performed by Costa.

SAP moves for an *in camera* review of Plaintiff’s affidavit of merit to determine whether it complies with the requirement of 18 Del. C. §§ 6853(a)(1) and

(c). Plaintiff filed an expert's affidavit and the expert's *curriculum vitae* in this case. The Court performed the review requested.

In Delaware, a medical negligence lawsuit must be filed with an affidavit of merit as to each defendant, signed by an expert, and accompanied by the expert's *curriculum vitae*.<sup>1</sup> As a general matter, an affidavit that track's the statutory language complies with the statute.<sup>2</sup> The expert signing the affidavit must be licensed to practice medicine as of the date of the affidavit and engaged in practice in the same or similar field of medicine as the defendant in the three years immediately preceding the alleged negligence.<sup>3</sup> The affidavit must also recite that reasonable grounds exist to believe that each defendant was negligent in a way that caused the plaintiff's injuries.<sup>4</sup> While the affidavit of merit must be filed under seal, a defendant may request the Court to review it *in camera* to ensure that it complies with the statute's requirements.<sup>5</sup>

As requested, after an *in camera* review of the affidavit of merit and the expert witness's *curriculum vitae*, the Court finds:

1. The expert signed the affidavit.

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<sup>1</sup> Flamer v. Nanticoke Memorial Hospital, 2020 WL 113911, at \*1 (Del. Super. Jan 9, 2020) (quoting 18 Del. C. § 6853(a)(1) & (c)).

<sup>2</sup> Dishmon v. Fucci, 32 A.2d 338, 342 (Del. 2011).

<sup>3</sup> Flamer, 2020 WL 113911, at \*1 (quoting § 6853(c)).

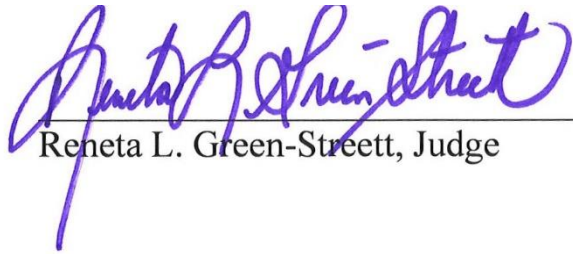
<sup>4</sup> Id.

<sup>5</sup> Id. at \*1 (quoting § 6853(d)).

2. The expert attached a current *curriculum vitae*.
3. The expert is currently licensed to practice medicine.
4. The expert has been treating patients in the same field of medicine as Costa for over three years, including the three years immediately preceding the alleged negligent conduct. Namely, the affidavit and accompanying *curriculum vitae* specifically reference the expert's experience in the diagnosis and treatment of both acute and chronic pathology involving inguinal anatomy and hernias. The expert actively practices surgical medicine; is a member of several professional medical organizations; and completed a surgical subspecialty fellowship in critical care. The expert also trains and educates residents as an associate professor at two separate medical institutions.
5. The expert recites and specifically lists the reasonable grounds to believe that Costa and SAP breached the applicable standard of care as it related to the diagnosis and treatment of Plaintiff's condition, and that the breach was a proximate cause of his pain, suffering, and need for a corrective surgery.

The affidavit of merit contains the information required by 18 Del. C. §§ 6853(a)(1) and (c) as to the allegations involving Costa and SAP. Therefore, the affidavit of merit is **COMPLIANT**.

**IT IS SO ORDERED.**



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Reneta L. Green-Streett, Judge

*Via File & ServeXpress*